NRCB Natural Resources Conservation Board

Year in Review 2002/03

Ensuring that the development of Alberta's natural resources takes place in a manner that is fair, responsible, sustainable and in the public interest

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Who we are

The Natural Resources Conservation Board (NRCB) is a provincial, quasi-judicial regulatory agency for Alberta's natural resource and confined feeding industries. The NRCB makes its decisions independently however, we report to Alberta's Minister of Sustainable Resource Development. We are 45 individuals working out of six locations throughout Alberta.

PROJECT ASSESSMENT AND APPROVALS

At the NRCB, we work to ensure that development of Alberta's natural resources occurs in a socially and environmentally responsible manner.

COMPLIANCE AND ENFORCEMENT

Although 2002 was our first year regulating the confined feeding industry, our experience does not begin there. The NRCB was established in 1991, when the province of Alberta saw the benefit of a regulatory approach, similar to the model used in the energy industry, for reviewing and assessing major non-energy natural resource developments, such as pulp mills, large recreation and tourism projects, mines and water management projects.

The expansion of our mandate to include regulation of the confined feeding industry has meant an expansion of our organization and our operations. It is an opportunity we embrace and we are proud to work with an industry that contributes in such an important way to Alberta.

REVIEWS

The Balancing Act

The functions of the NRCB can be categorized into three areas – assessment and approval, compliance and enforcement, and adjudication. All of these functions are influenced by our duty to ensure that the decisions we make are in the "public interest". The public interest component that forms the mandate of the NRCB is set out in our enabling statute as the foundation upon which the NRCB must base its decisions. Making decisions in the public interest means considering the economic, social and environmental impacts of proposed projects, ensuring that impacts are mitigated to the greatest degree possible, and balancing all these elements to arrive at decisions that are in the best interests of Albertans.

PUBLIC

The public can rely on the NRCB for:

- a balanced decision-making process for resource development,
- a forum to examine the economic, social and environmental impacts of resource development,
- the opportunity for directly affected individuals and communities to be heard,
- compliance and monitoring of the livestock industry,
- timely and effective response to public complaints regarding livestock operations,
- public safety and environmental protection regarding livestock development, and
- publicly accessible information.

INDUSTRY

For the industry, the NRCB provides:

- a competent and consultative regulatory environment,
- one-window for regulatory approvals,
- a fair and balanced approach to approvals, compliance, and reviews, creating a fair and level playing field
- consistency in enforcement of the standards,
- an impartial and open review process, and
- opportunities for directly affected parties to apply for a Board review of any decision or enforcement order.

GOVERNMENT

The NRCB works with government departments and agencies by:

- providing an effective, fair and open approach for resolving community conflicts related to resource developments,
- providing a regulatory system that reflects Albertans' desires for future development,
- ensuring that matters of mutual concern are addressed efficiently.

THE NRCB'S VISION

PUBLIC INTEREST

Ensure that all elements of the public interest are fully and impartially considered in all NRCB business activities.

ACCOUNTABILITY & TRANSPARENCY

Provide stakeholders with full, clear and timely disclosure of all Board decisions.

FAIRNESS AND EFFECTIVENESS

Create a level playing field for operators by ensuring compliance with existing regulations and approval conditions.

BALANCE

Establish a relevant, credible and responsive regulatory process based on a balanced approach to decision making, and which contributes to stakeholder confidence and sustainable development.

THE BOARD

The NRCB's Board is comprised of a Chairman and five Board Members. The Board Members bring to the NRCB a vast array of complementary backgrounds and experiences.

Gordon A. Atkins, D.V.M.

Gordon has practiced large animal veterinary medicine for 30 years, specializing in dairy herd health. He is a Senior Associate Director of the Calgary Exhibition and Stampede and serves as an Acting Board Member for the Alberta Energy and Utilities Board.

Sheila A. Leggett, P. Biol., P. Ag.

Sheila brings to the Board over 20 years of experience in the environmental sciences. Sheila combines her strong background in management and in environmental research with practical knowledge to design sustainable development solutions.

Maureen P.J. Schwab

Maureen's experience in municipal politics has been extensive. She was a Councilor and Reeve of the M.D. of Brazeau and Farmer Rep. on their Agricultural Service Board. She also served as a Director of the West Central Airshed Society for several years. Maureen has operated a purebred cattle operation near Drayton Valley for over 30 years.

Jim Turner

Jim was an elected delegate of the Alberta Cattle Commission for 10 years and served as Chairman, among other roles. Jim was also an Alberta representative with the Canadian Cattleman's Association and served on numerous other committees. Jim is a co-owner/operator of a family farming and ranching enterprise in Cochrane, Alberta and previously operated a dairy farm.

Brady Whittaker

Brady has been involved in municipal politics and business for many years. He served as Mayor of Whitecourt and has chaired various municipal committees. For 10 years, Brady was owner and director of a helicopter services company and also worked as an Inspector for the ERCB.

There is a saying that one does not discover new lands without departing from the familiar. This seems like a fitting expression for the NRCB and the journey embarked upon as we moved to assume a new regulatory mandate for Alberta's livestock sector.

The agriculture industry is a cornerstone of the Alberta economy. Ensuring its prosperity, while still preserving our natural environment and protecting the people of this province is an ongoing goal of the Alberta government. Alberta Agriculture, Food and Rural Development was tasked with developing a new and unique piece of legislation, the Agricultural Operation Practices Act (AOPA), to ensure that Alberta's livestock resources were developed in a manner that would provide a new balance between the needs of the industry, the environment and the surrounding communities. The result is a regulatory system that is based on science, common sense, and a single set of consistently applied standards.

On January 1, 2002, the NRCB was given the privilege of delivering this new regulatory system. This represented a significant expansion of the NRCB's traditional mandate and required the assembly of a dedicated team of experienced professionals. Once brought together, they have worked diligently to translate AOPA from words on the page to a living, breathing regulatory system, incorporating invaluable input from a range of stakeholders, including the public, local governments, and industry.

This report summarizes just a few of the achievements that this group of dedicated staff have accomplished over the first year of operation. To say that their success is impressive would be a major understatement and it is difficult to express just how much pride I take in being given the chance to lead such an outstanding team.

But perhaps even more impressive are the tasks that they have set for themselves for next year. Last year was our building phase, seeking out and finding the key people needed to deliver AOPA. With that monumental task accomplished, for 2003/2004 the new focus is on further improvements in the delivery of service and the cementing of the positive and collaborative working relationships established with all of the various groups we serve.

We hope that this report will provide you with a good overview of who we are, what we do, and a measure of our accomplishments for 2002/2003.

Sincerely yours,

Brian F. Bietz
Chair

Brian F. Bietz, Ph.D., P.Biol., Chairman

Brian brings over 25 years of experience in the environmental sciences, including over a decade in the regulatory forum as a Board Member with the Alberta Energy and Utilities Board.

The NRCB's approval function relates to the decisions it makes on applications for new and expanding confined feeding operations, as well as applications for certain proposed projects that affect natural resources, such as water management projects, pulpmills, non-energy mining projects, and major tourism and recreation projects. The NRCB has been conducting project reviews, assessments and public hearings for these major natural resource projects since 1991. For the confined feeding industry, our work here has just begun, but it has meant a 10-fold increase in the NRCB's workload.

It is the NRCB's role to bring balance to the decision-making process for resource development. This means, when assessing an application, the NRCB must consider effects on the environment, economy, the community and the appropriate use of land, including impacts on adjacent properties, surface and groundwater, and on air and soil quality.

The NRCB does this for every application it receives.

approvals

1

ONE WINDOW CONTACT

Producer will learn what type of NRCB and other provincial approvals and information are required.

2

PREPARATION OF APPLICATION

Producer designs project, conducts studies and completes and submits a two-part application form that addresses all required provincial approvals and dispositions.

3

APPLICATION DEEMED COMPLETE

NRCB Approval Officer determines that application is complete and submits it to AENV and other agencies for confirmation that it contains all the required information. Applicant may be required to submit additional information.

NOTICE OF APPLICATION

Affected parties are notified of the application. For registrations and authorizations, only the applicant and the municipal government are notified. For approvals, potentially affected parties are notified by letter or public notice and they are asked to provide written statements of concern (SOC) that explain how they would be directly affected. If an approval is required under the Water Act, a joint notice or separate notice may be required.

Note:
Applications for REGISTRATIONS AND AUTHORIZATIONS will be processed using Steps ① ② ③ ⑤ and ⑦

Applications for APPROVALS will be processed using Steps ① through ⑦

Approval and Siting of New and Expanding CFOs and Manure Management Facilities

As a result of the new AOPA legislation in 2002, the NRCB's role expanded to include the approval and siting of new and expanding CFOs and manure management facilities in the province. Prior to 2002, approval and siting rested in the hands of each municipality and county in the province.

Municipalities Continue to Play a Role

Moving approval authority from municipalities to the NRCB was, in part, a response to the need for the same standards to be applied in the same way across the province. Municipalities were also finding that as the industry was attempting to grow and rural developments were attempting to expand, conflicts among their neighbours were also increasing.

With one agency (the NRCB) regulating the industry versus sixty-eight different municipal districts and counties, the goal of the consistent application of standards is easier to achieve. As an independent regulatory agency, the Board is less sensitive to local pressures, is able to base its decisions on science rather than emotion, and relieve municipalities from being in the difficult position of coming between their neighbours and constituents.

But municipal input is still extremely important. While they will no longer issue permits for CFOs, municipalities can develop agricultural land use plans to identify areas where CFOs would not be compatible with current or future land uses. Municipalities are automatically considered "directly affected parties" of an application and the NRCB is mandated to seek input from municipalities. Through the application process an NRCB Approval Officer ensures the municipality receives a copy of the proposed application so that it might provide input or file a Statement of Concern for the NRCB to consider when reviewing the proposal. The municipality can also identify terms and conditions it believes should be included in an NRCB approval so that municipal concerns are addressed.

Approval Officers must deny an application that does not meet with the planning considerations in the municipality's municipal development plan.

TECHNICAL REVIEW

NRCB, AENV and other relevant agencies conduct technical reviews to determine whether the application meets the requirements of relevant legislation, regulations and standards. Copies of the application may also be submitted to regional health authorities and other agencies for their views on the application.

REVIEW STATEMENTS OF CONCERN

Approval Officer shares SOCs with AENV and other relevant agencies and makes determination of which parties would be directly affected. The applicant is given the opportunity to address outstanding concerns.

APPROVAL OFFICER'S DECISION

Approval Officer determines whether application contravenes any of the regulations, standards or the municipal development plan and then considers the SOCs and other information to determine whether application can be approved. Application can be denied or approved with appropriate conditions.

AENV and other relevant agencies will only issue their approvals or dispositions after the NRCB has made its decision and there are no further opportunities for Board reviews of the decision.

Parties can seek Board review of any of Approval Officer's decision by submitting a letter within 10 working days of receiving that decision. If no concerns are received, the decision stands.

Board can choose whether to hold a review, and what issues and who will be heard if it decides to conduct a review. Parties will be asked to provide written submissions and evidence, and will be allowed to ask questions of others. The Board can decide to confirm or reverse the Approval Officer's decision and add or modify any terms and conditions.

NRCB Approval Officers

Approval Officers work alongside our Inspectors operating out of the NRCB's four regional offices in Red Deer, Lethbridge, Barrhead and Fairview.

Approval Officers will review producers' applications for approvals, registrations and authorizations to ensure applications are complete. Approval Officers have expert understanding of engineering and design requirements. They offer producers assistance with completing their applications; they can provide advice on design, and guidance with understanding requirements.

Meeting the New Standards for CFOs

The application process that the NRCB uses includes the handling, processing and decision-making on applications for new and expanding facilities or modifications to existing approvals. In assessing applications on a case-by-case basis it is the duty of the Board to consider relevant factors. The applications are required to ensure that development activities meet the standards and the public interest. The Approval Officer will determine whether the proposed project meets all technical, safety, environmental and municipal planning requirements and ensure that applications are complete and contain the proper supporting technical documentation.

Initial Contact with NRCB for a Development

The NRCB encourages operators to make initial contact with an Approval Officer, early in the process, in order for operators to learn what type of information will be expected from them and the timelines that are relevant to their particular application. Approval Officers are available to meet with applicants or potential applicants at any NRCB regional office (Red Deer, Lethbridge, Barrhead or Fairview) or can be contacted by phone, fax, email or through our website.

New Application Requirements for CFOs

For those operators familiar with the former municipal approval process, there are a few significant differences between that process and the current NRCB process that deserve some attention.

Increased Technical Requirements

All applications are now subject to detailed technical review, and now standard information is required of producers no matter where they are located in the province. Information required is much more extensive than in the past, which may result in increased time to prepare and review a given application; however, covering the bases helps us ensure projects are developed appropriately. NRCB Approval Officers are available to provide operators with hands-on assistance in preparing their applications, and helping operators to understand new requirements.

Process Harmonization, One Window Approach

A second key difference is that the NRCB approval process has been designed to ensure information needed for all approvals, such as from Alberta Environment and Alberta Transportation, are now contained within a single application form.

Affected Parties

Concerns of various potentially affected parties, such as neighbours and municipalities need to be dealt with in accordance with the legislation. But, aside from legislative requirements to notify affected parties of project proposals, the NRCB encourages applicants to attempt to address neighbours' and the public's concerns by being consultative and informative about their intentions. Proponents should seek out concerns, comments and ideas from all those potentially affected.

Application Deemed Complete

The formal review of an application can only begin once an application has been deemed to be technically complete, meaning that it contains all required information. NRCB Approval Officers will review applications and advise applicants of any deficiencies. However, the formal review cannot start until an operator has addressed all outstanding deficiencies.

Two-Part Application Form

The NRCB application form is divided into two parts. Part 1, referred to as the Disclosure portion of the Application, is easy to complete and to review. It ensures that an Approval Officer has sufficient information to establish the date to be used in calculating the minimum distance of separation (MDS), and provide notice to a municipality, without the producer having to provide the completed technical application.

Part 2 of the NRCB's application form is used to collect all the technical information that an operator must provide before the NRCB can notify affected parties and begin its technical review of a proposed development. It has also been designed to assist operators in obtaining necessary permits from other provincial approval agencies.

Working with Others

Before any decision is made on an application, the NRCB conducts a thorough review, which includes consulting with other agencies and departments such as Alberta Agriculture, Food and Rural Development, Alberta Environment, Alberta Sustainable Resource Development and Regional Health Authorities.

Stating Your Concerns If You are Directly Affected

Residents in the area of a proposed confined feeding operation have the opportunity to raise issues and to offer their views for consideration by the Approval Officer considering the application. Upon notice of the proposed development, area residents are given the opportunity to file Statements of Concern with the Approval Officer. If an area resident does not file a Statement of Concern, they will not be accorded status as a directly affected party. If a Statement of Concern is filed, the Approval Officer may nonetheless decide that the person filing the statement is not a directly affected party.

Parties who are recognized as directly affected parties by the Approval Officer and who are not satisfied with the decision of the Approval Officer may seek a Board Review by filing a Request for Review setting out the issues or grounds upon which that person feels a review is merited.

Disagreeing with a Decision

Directly affected parties are always guaranteed an opportunity to apply to the Board for a review of any decision on an application under AOPA. If a directly affected person has an objection after the NRCB has issued a decision, he/she may apply to the Board within 10 working days to ask for a review; this is done by submitting a "Request for Review" to the NRCB. The Request for Review should set out the basis for seeking a review on the merits of the issues that the affected party feels were inadequately considered by the Approval Officer.

If an operator feels they have been treated unfairly or disagrees with any part of an NRCB Enforcement Order, they may apply to the Board for a review of the Enforcement Order.

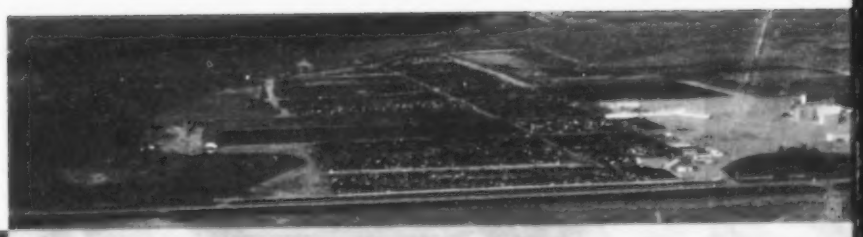
People who filed Statements of Concern but who were not granted directly affected party status, may also request a review of that decision.

Quasi-judicial, Open and Fair

Being quasi-judicial in nature, Board reviews are subject to administrative law requirements and procedural rules of fairness. Reviews meet the NRCB's fairness requirement by providing all directly affected parties with the opportunity to intervene and have their concerns considered.

A review also allows for an open, public testing of technical, environmental, social and economic evidence. The process ensures that all relevant arguments, for and against the proposed development, are heard.

reviews



Conducting Reviews

Reviews typically take the form of a public hearing, but the NRCB may use other methods, such as mediation, written proceedings or meetings to attempt to resolve concerns and objections, and to allow the Board to gather evidence in reaching a final decision.

An NRCB review in the form of a public hearing is conducted by a panel usually consisting of three Board Members and/or Acting Board Members.

The NRCB attempts to hold its public reviews at a time and location convenient for those who wish to participate. Public reviews are usually held in a public hall or meeting room close to the proposed project, and near where the majority of the affected parties live. The public review typically begins by having the NRCB Approval Officer or Inspector explain their decision and their reasons for making the decision. Then directly affected parties, including the applicant, present their case for why they agree or disagree with that decision. In all cases, parties may question the NRCB Approval Officer or Field Inspector and the other parties. All participants can then provide the panel with a final summary of their position.

The Final Say

The NRCB's decisions on reviews are final. Decisions can only be challenged (appealed) in court if someone believes the Board made an error in law or did not have the jurisdiction to make such a decision in the first place.

Compliance and Enforcement

An important part of the sustainable, equitable and responsible development of Alberta's natural resources is the rules and standards that industry must follow.

The NRCB's compliance and enforcement activities are focused on the regulation of the livestock sector. Recognizing that times had changed, the Government set out to alter the way the livestock industry was regulated, and in 2002 the NRCB undertook a province-wide program for responding to complaints related to livestock operational issues.

Alberta Agriculture, Food and Rural Development (AAFRD), in consultation with Alberta Environment, Alberta Municipal Affairs, Alberta Health and the NRCB, was responsible for writing the new rules, known as the Agricultural Operation Practices Act (AOPA).

The NRCB governs the operational and environmental safety requirements of confined feeding operations and manure management practices under its jurisdiction through AOPA. The NRCB's role as a regulating body is to ensure that livestock operators understand and follow the rules so that Albertans can be confident that the province's livestock sector operates responsibly and in a manner that protects the public, preserves the environment and allows for the sustainable development of the livestock industry.

compliance

A toll-free Response Line for Livestock Complaints

One of the NRCB's key achievements in this first year of regulating the livestock industry has been its ability to respond to citizens' concerns and complaints about livestock operations.

The NRCB's Compliance and Enforcement group currently uses a complaint driven inspection/investigation process. If individuals have a complaint or wish to voice a concern regarding a livestock operation in the province they can call the NRCB Response Line at 1-866-383-6722. This toll-free number can be used 24 hours a day.

The NRCB also receives and responds to complaints from municipalities, regional health authorities, or any other government agencies.

What do NRCB Inspectors Do?

Inspectors operating out of the NRCB's four regional offices – in Red Deer, Lethbridge, Barrhead and Fairview – respond to complaints through the NRCB Response line or directly to the regional offices.

In the course of investigating a complaint, an Inspector may wish to carry out an inspection on the particular operation involved in the complaint.

Responding to complaints is only part of the equation for a successful compliance program. In the coming year, the NRCB will enhance its monitoring approach, and will begin visiting operators, checking to ensure their operations meet the conditions of their permits and, if necessary, making them aware of the need to correct operational issues or directing them to bring their operations into compliance. This allows the NRCB to more broadly report on the performance of the industry, rather than just those operations that the NRCB receives complaints about; and this gives the public a better understanding of the industry.

Our Focus is on Voluntary Compliance

Our approach is to work with operators to achieve voluntary compliance. Whenever possible, our Inspectors inform and educate operators with respect to the current legislation so that they will address any deficiencies that an NRCB Inspector may have identified.

However, the NRCB recognizes that voluntary compliance is not always effective. Where necessary the NRCB uses its enforcement tools.

We believe most operators are good neighbours, and want to be good neighbours. We would encourage residents with concerns about operations to contact the operator first. This way, the operator has a chance to rectify a problem before the NRCB or other agencies need to get involved. As well, direct contact with the operator will likely result in a faster response, resolution of issues and better relationships between neighbours.

High Regard for the Rules

NRCB Inspectors make every effort to ensure that any enforcement action is fair, appropriate, timely and effective.

Our goal is to ensure that livestock operators understand and follow the rules so that Albertans can be confident that Alberta's livestock industry operates responsibly in ways that protects the public, preserves the environment and sustains the industry.
Operators will face escalating consequences for failure to respond or repeated non-compliance. However, in our first year, it has been our experience that the industry has demonstrated a high regard for the rules. Of 158 instances where corrective action was required, in only two instances the NRCB was compelled to apply an escalated enforcement action.

Enforcement Action

During an inspection, an NRCB Inspector has enforcement tools that can be used depending on the severity of the situation and the type of contravention of AOPA that has occurred. Enforcement tools include such things as verbal directives, warning letters, Enforcement Orders, Court Orders, prosecutions and fines.

In addition to a contravention of AOPA, other things may trigger an enforcement action. These include: a contravention of an existing municipal development permit or of a condition in an approval, authorization or registration issued by the NRCB. Also, enforcement action may be taken if there has been a risk to the environment or an inappropriate disturbance.

Working with Others

When necessary, NRCB Inspectors communicate and work in cooperation with other agencies that also have an enforcement role of their own, including Alberta Environment, Sustainable Resource Development, the Regional Health Authorities, Fisheries and Oceans Canada, Environment Canada and the Regulatory Services Branch of Alberta Agriculture, Food and Rural Development.

OTHER SOURCES OF INFORMATION

Guide to the Application and Approval Process

This guide is currently available to assist operators in better understanding the application and approval process and to assist them with their applications. A copy is available on the NRCB's website at www.nrcb.gov.ab.ca/web/documents/Approval_Process_Guide.pdf, or by contacting any NRCB office.

Agricultural Operation Practices Act and Regulations

You can get a copy of the Act and regulations by contacting the NRCB, or they can be downloaded from our website at www.nrcb.gov.ab.ca/web/regulations/aopa.htm.

Reference Guide: Agricultural Operation Practices Act

This guide, developed by Alberta Agriculture, Food and Rural Development, summarizes important aspects of the Agricultural Operation Practices Act. A copy is available on AAFRD's website at www.agric.gov.ab.ca/aaopa/[illegible]. Printed [illegible] form. Copies are also available from the NRCB.

This year AAFRD will be leading a consultation process to fine-tune the legislation. You can find information on the process on AAFRD's website.

Our thanks to Alberta Agriculture, Food and Rural Development for supplying the livestock photographs for this report.

OUR STAFF

Administrative Support

Board Member

Chair

Director, Compliance & Enforcement

Administrative Assistant

Applications Coordinator

Director, Approvals

Approval Officer

Inspector

Secretary to the Board

Senior Soil Specialist

Inspector Compliance Analyst

Approval Officer

Financial Administrator

Administrative Assistant

Inspector

Director, Communications

Administrative Assistant

General Counsel

Approval Officer

Approval Officer

Communications Specialist

Board Member

Inspector

Inspector

Approval Officer

Director, Science and Technology

Call Centre Analyst

Accounting Assistant

Environmental Scientist

Approval Officer

Director, Finance & Risk Management

Administrative Assistant

Inspector

Review Officer

Board Member

Administrative Assistant

Senior Hydrogeologist

Counsel

Director, Board Review

Board Member

Assistant to the Board

Review Officer

Board Member

Inspector

Contact Us:

NRCB Response Line
(Toll-free) 1-866-383-6722
(for complaints from the public regarding livestock operations)

NRCB Offices

Red Deer	(403) 340-5241
Lethbridge	(403) 381-5166
Barrhead	(780) 674-8303
Fairview	(780) 835-7111
Calgary	(403) 662-3990
Edmonton	(780) 422-1977

NRCB Website

In 2002, we launched a new website. We designed our new site to provide quick and easy access to key areas of the NRCB including information and key contacts for developments pertaining to the Agricultural Operation Practices Act (AOPA).

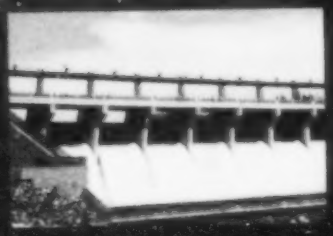
You'll find everything, from information to help you understand the process involved in completing an NRCB application, to how we undertake compliance and review activities.

There are helpful fact sheets and guides to assist you along the way.

So, have a look and let us know what you think...

1.866.383.6722

www.nrcb.gov.ab.ca



NRCB Natural Resources Conservation Board